

UPPER CLARK FORK STEERING COMMITTEE

MINUTES – November 9, 2000

MEMBERS PRESENT:

Gerald Mueller	<i>Facilitator</i>	Jim Dinsmore	<i>Granite C.D.</i>
Bob Benson	<i>C.F. Pend Oreille Coalition</i>	John Sesso,	<i>Butte/Silverbow</i>
Brent Mannix	<i>N. Powell C.D.</i>	Kathleen Williams	<i>FWP</i>
John Vanisko	<i>Deer Lodge Valley C.D.</i>	Jim Quigley	<i>Little Blackfoot</i>
Gary Ingman	<i>MT DEQ</i>	Bob Bushnell	<i>Lewis & Clark C.D.</i>
Holly Franz	<i>PP&L Montana LLC</i>	Eugene Manley	<i>F.C. & MWRA</i>
Jules Waber	<i>Powell County</i>	Robin Bullock	<i>ARCO</i>

MEMBERS ABSENT:

Mike Griffith	<i>Lewis & Clark Co.</i>	Martha McClain	<i>Missoula C.D.</i>
Michael Kennedy	<i>Missoula County</i>		
Audrey Aspholm	<i>Anaconda/Deer Lodge County</i>	Ole Ueland	<i>Mile High C.D.</i>

VISITORS PRESENT:

Steve Fry	<i>Avista Corp.</i>
Mike McLane	<i>DNRC</i>

The Upper Clark Fork River Basin Steering Committee met Friday, November 9, 2000, in St. Mary's Center, Deer Lodge, MT.

WELCOME:

Gerald Mueller welcomed Committee members and visitors and called the meeting to order. The agenda for the meeting was as follows:

1. Meeting with Governor concerning State-Avista Negotiations
2. Georgetown Lake Watershed Committee Meeting
3. Nevada Creek Dam Repair Project
5. TMDL, Court Ruling and its Implications
6. Public Comments

ANNOUNCEMENTS:

No announcements were made at this time.

Governor meeting on State Avista Negotiations:

Gerald Mueller provided a reported on the Steering Committee's meeting with Governor Rocicot concerning the Avista State Negotiations process and progress. Eugene Manley, Brent Mannix, Steve Fry met with the Governor,

Jack Stults, DNRC Water Resource Administrator, and Mick Robinson. Participants discussed the state's decision to cease of negotiations.

The Governor was very interested to learning that people were interested in the process to continue. The Governor believed that the FERC decision had stifled actions and no one was interested in continued negotiations. The Steering Committee representatives expressed interest in continued evaluation of options within the state's forums.

DNRC discussed the mechanisms to accomplish a continued process and difficulties in carrying out such a process without resources. Jack Stults indicated that while the agency was willing to move forward on such an issues decisions had to be made for funding and technical support. Defining alternatives on basin of this size also would benefit from some type of agreed upon directive.

As a result of this dialog the Governor suggested a legislative action to initiate a planning process with a budget that would to support an ongoing collaborative planning effort on the Clark Fork.

Mike McLane presented the "draft legislation" and budget as developed at this point. The concepts of the draft borrowed heavily from the legislation that originally created the Upper Clark Fork Basin Steering Committee. A task force or steering committee is suggested. Task force representation includes from multiple basin interests and geographic locations.

The task force is to craft a draft water management plan that could be reviewed and adopted through the state water planning process. Task for deliberations are to be conducted in a public forum through collaborative processes and are to consider existing basin closures, restrictions on groundwater development in the Upper Clark Fork river.

A budget has been proposed that emphasis contracted services. Funds are proposed for a) facilitation and process assistance, b) reevaluation and modification of existing basin water use models c) evaluation of basin groundwater conditions and d) collection or presentation of the relevant data on basin conditions.

Although suggested legislative language has been developed and submitted to the Governors Office for consideration a sponsor has not yet been identified.

Discussion

Gerald noted that this legislation goes beyond what steering committee members were requesting. The process described by Mike is more than a continuation of the negotiation process. He asked if this is what the committee wants.

John Vanisko asked what are we going to get from this or what's down the road?

Steve Fry noted the we need a better process to provide for future development and protection of existing users. John- In other words we need a deal.

Jim Dinsmore stated that the Closure and exemptions, such as provisions for the protection of stored water, are still up in the air. Senior users still have concerns over storage. A management plan may help. A Clark Fork Basin closure may help in the future. We are still dealing with existing water law and priorities. Exemptions don't necessarily help exiting users.

With this process are we getting to a point that if the right terms are created Avista and other interests might develop the conditions that would protect hydropower and still meet future needs. Past negotiations were between the State and Avista. Now the number of "players" or "participants" is bigger.

Steve was asked if there is any possibility of a "contractual agreement" between parties?

John asked Steve if Avista had plans to expand generations. Steve noted that the existing units might be upgraded but expansion was not possible.

Gary Ingman noted that the potential for water development appear highest in the Flathead. Also the Flathead drainage is the largest contributor of flows into the basin. The Clark Fork is a relatively dry basin. Gerald noted that there were still junior users in the Upper Clark Fork.

Jim noted that the state is still issuing water permits in the Flathead which increases the vulnerability of junior users. However, it is easier to make call in the Clark Fork too.

Holly noted that water right permitting in the Flathead is on hold as is the adjudication. Attempts to address the tribal water rights are on going. This lack of a decree limits enforcement and water commissioners.

Kathleen Williams asked if the Clark Fork bill would duplicate the state water compacting effort (Reserved Water Rights Compact Commission). Jim asked if the Compact Commission represented the entire state?

Gerald noted that the Steering Committee needs to evaluate what they would like to do. Perhaps not today since the bill will get introduced until January. At that time the Committee should decide if they should be active in this issue.

Holly noted that a lot of what is happening will occur down the road. Who's paying the cost of future development – it's the old guy (senior users) not the new water users.

Jim again asked if there is a reason that an agreement with the Upper Clark Fork and Avista couldn't be crafted. Steve agreed that there might be an opportunity.

Jules Weber noted that such an agreement might serve as a model.

Gary asked if you could look at basin water yield and make an “equitable call” -- go where the water should be coming from. Steve stated that one would need to evaluate such a concept based upon the outcome of the adjudication.

Gerald noted that Avista could be asked if they were willing to share the shortages – Avista should not make up all the shortage as not currently occur.

GEORGETOWN LAKE:

Gerald Mueller reported on the newly formed Flint Creek/Georgetown Lake Watershed Committee. The effort is an outgrowth of the conflicts over water releases and lake conditions during last summer drought. Disagreements between water interests in the Flint Creek basin over management of Georgetown Lake and lake levels resulted in a lawsuit and a settlement agreement crafted in Federal Court.

The Settlement a) established late summer, fall and winter discharge levels, b) reinforced the FERC operating guidelines and targets and c) created a small advisory group to assist the county. However, at this time, there remain questions of adequate representation in the decision processes.

After discussions with Jim Dinsmore and some of the affected parties the Steering Committee hosted a meeting of basin interests – primarily homeowners - to determine a) their satisfaction in the settlement agreement and if that might not be adequate, b) their interest in seeking solutions through a collaborative process.

That initial gathering generated a second meeting where those same questions were posed to a larger audience including interests from the Flint Creek valley. Homeowners, irrigators and business people are concerned over issues of adequate representation in the process identified in the Settlement Agreement.

Of growing, but perhaps lesser interest is participation in a DNRC’s Change of Water Right process. (DNRC has notified Granite Co. that there current management is not in compliance with historic use and that no water rights exist for the benefits that appear to be targeted by current management.) These participants stated a desire and need to seek resolutions through a larger representative effort.

Several meetings have now been hosted. Participants have discussed the settlement agreement crafted before the federal court, public involvement in the creation of long term agreements and are beginning to examine past conditions and operations. Future management actions are likely include 1) the Advisory Committee’s recommendations for future operations and the State’s request of Granite Co. (current owner of the dam) for an Application to Change Appropriative Water Rights.

The Steering Committee, to date, has hosted Gerald's involvement in the process. This action is consistent with the Steering Committee's work plan. However, the Steering Committee needs to decide if these efforts are appropriate. Gerald noted that both Eugene and Jim have had some participation in these meetings.

Discussions:

Eugene noted that many of the operational actions for Georgetown Lake are found in the 1906 Federal Decree. The building of the dam stimulated this decree. That decree affects the lake and upper basin irrigators. The Featherman Decree is the lower basin decree. One of the things that troubled irrigators is the first two meeting the irrigators didn't know about. He also noted that the irrigators are now meeting and working on an irrigation management plan. Eugene hopes that this committee of irrigators has a chance to work their concerns out. He wonders if the irrigators and homeowners shouldn't form their own groups.

Gerald noted that this is an opportunity to get people to talk. The Steering Committee's role is not to pick winners and losers.

John Sesso noted that the Steering Committee has had some success in working in both sides. It seems that Flint Creek user's interest could be divergent from those of Georgetown Lake. The first meeting was a bit of flexing of muscles. Butte Silverbow would be reluctant to be part of this process if it were not for Gerald's involvement.

Eugene noted that it is very important to build a water management and drought plan. The irrigators "own" 97% of the water and have a lot of information to share with each other and the lake residents. John encouraged Eugene to work with irrigators to do just that but to also participate in the watershed and lake management efforts. John Sesso also clarified that the currently have active management in the Silver Lake, Storm Lake and Warm Springs creek drainages. While there is a connection and historic uses of water between Georgetown and Silver Lake it is important to remember that comparing Silver Lake and Georgetown is like comparing a teaspoon to a bucket.

Holly noted that historically ACM took a lot of water from Georgetown Lake but that large Georgetown ACM water rights is no longer in existence.

Jules asked where all the water in Warm Springs came from this year. John Sesso talked of a contract with ARCO who puts water into Water Spring Creek at Meyers dam between June 22 and October 30.

John stated that there exists a great deal of respect for Eugene and he would like to have the Flint Creek Water Users work with Georgetown residents while they are developing a plan. Further, he feels Gerald should remain involved.

John Venisko asked who was representing Georgetown Lake. (Jan Christianson and Chuck Stoke are the homeowner's representatives on the Advisory Committee.)

Jim Dinsmore noted that DNRC's change process is being discussed. Who owns the dam and water rights are an issue but the nature of the change processes (a contested case process) could put people on different sides. He could see value of a collaborative group in positively influencing that process.

The make up of the settlement's advisory group was discussed (2 homeowners, 2 irrigators, DNRC, DFWP and USFS).

Eugene noted that Georgetown has brought groups together to discuss individual needs.

Gerald noted that the collaborative group process is still forming. Gerald asked if his role was inappropriate.

The Committee decided the Steering Committee should help the Georgetown lake/Flint Creek Watershed get started. However, after that point the local interest should drive their watershed effort.

Nevada Creek Dam Repair Project

Brent Mannix presented the background and current activities to repair Nevada Creek Reservoir – a project built by the State of Montana and operated by local water users through the Nevada Creek Water Users Association. A feasibility study recommended reconstruction of the spillway, extension of the outlet works and improvements to seepage control.

Projected costs of rehabilitation are over 2.9 million. Many water users are concerned that they are pushing their ability to pay. Currently the proposed funding sources include;

\$100,000 grant, Montana Renewable Resources Land and Grant program,
\$494,000 loan, Montana Renewable Resources Land and Grant program,
2,360,000 from the Broadwater Hydropower & Water Storage Account,
and
DNRC will provide \$125,000 of administrative and technical support.

The proposed loan program will require an assessment to water users of an additional \$4.50 per share. Brent noted that the Feasibility Study developed under contract identifies this as being within the irrigator's "ability to pay". The irrigators are concerned with this analysis. The current assessment added to existing Operation and Maintenance and two previous special assessments will bring the cost per share to over \$10.00 a share.

Brent asked the Committee if they would provide support (letters and testimony) in the upcoming legislative process. The Loan and Grants are provided through a competitive process that also includes legislative

approval and therefore legislative support. The states budgetary process may also result in competition for the Water Storage and Hydropower account funds.

In the legislative process consideration of a lower loan interest rate will also be requested to improve ability to pay.

Jim Dinsmore noted that the state is not in the business of making money on loans, these projects are intended to provide public benefits. Eugene noted that the committee supported similar benefits to East Fork Reservoir during its rehabilitation.

Gary asked if there was any interest in looking at water quality and fishing benefits. Is there a possibility to look at those opportunities in this process? Brent was worried that the Association's board might not be open to delay in the rehabilitation. Water users might also be afraid of losing rights, however, he personally would like to see such activities move forward.

Gary asked if the rehab was working on distribution and water management.

John Sesso noted that sequencing is important. The activities at issues could bring them together but some one needs to bring their checkbook. He also noted that it is unfair to Brent people to place too many burdens upon them at once. There is an opportunity for multiple benefits but we don't want the initial agreement to crumble. Kathleen noted that storage allows other opportunities. Jim cautioned that we shouldn't make the issue too complicated.

Bob Benson noted that we are using public monies and water quality is a public benefit. Mike stated that most of the benefits shared in water quality and water management could come with the rehab of the water distribution and application systems. Nevada Creek water developments are very complicated and cannot be appropriately evaluated prior to this legislative session. Those shared benefits exist but come at the next stage.

Committee members noted that both Senator Tom Beck and Representative Doug Mood, both former members of the Committee would be involved in the legislative debate. The committee should contact them for support. Gerald asked the committee what form the support should be? Is it a letter and to whom. Is it from the Committee or from individual members?

The committee recommended letters to appropriate decision-makers.

TMDL Court Ruling and Implications:

Gary Ingman reported on DEQ's involvement in the TMDL lawsuit. Last November the Judge found in support of the defendants on 3 of 4 counts. He also ruled that the state had not shown good prior program development. During the period of November 99 and June 2000 the state waited for a remedy. In June the Judge ruled that EPA should approve or develop TMDL for

everything on the **1996** list of impaired streams. It is important to note that this decision discounted the recent changes in Montana Nonpoint program and the revised and aggressive evaluation of water quality impairment data. However, the judge did utilize the statutory target of 2007 for TMDL development.

All TMDLs developed need to comply with the implementing federal regulations. If EPA fails to approve the State's TMDL then EPA must develop that TMDLs. EPA's failure to meet the timeline is considered a failure to act. An additional significant issue with the courts order this the limit on new or expanded discharge or other water quality permits – no new permits can be issued on a water source until the TMDL is approved.

DEQ, in July 2000, asked the court for clarification and to reconsider the process. DEQ also asked for consideration with the updated list of impaired stream as the developed in 2000. Also DEQ desired additional clarification on discharge permit limitation.

The court was notified that the State of MT issued new or revised permits -- not EPA. Further, DEQ argued that restrictions should only be in those instances where the discharge might increase the impairment. Often the impairments and discharges under permit are unrelated.

DOT also reacted. They were concern the ruling would inhibit their ability to get their storm water permits need to carry out their daily activities and new road construction project.

DEQ request a "stay" of the order in early November 2000. In the court response short term permits will be unaffected by the court order. General permits can be renewed. The remaining unresolved issues with water impacts. The court also stated that the current impaired stream list could NOT be use. TMDL are to be developed for all stream on the 1996 list.

Questions remain. This is clearly a "work in progress". Some have suggested an appeal to the Ninth Circuit.

In anticipation of work under the current court order, DEQ has developed a draft schedule to meet the TMDL deadline. The draft schedule contemplates a watershed approach. Ninety-one watershed segments are considered. There exist great variations in data between these segments. Individual TMDLs will be developed within a watershed-planning unit.

Priorities between watershed unit have been identified and DEQ will emphasize those priorities. However, DEQ will not hold up TDML in other areas for "the schedule". Where there is no local interest or initiative DEQ will develop the TMDL (a top down approach).

The 1996 list included over 900 impaired segments. The 2000 list has only 470. There are 430 streams where substantial credible data review indicated that data was currently not sufficient to make a determination of water quality

conditions. There remains a need for a rigorous reassessment on these reaches.

John Sesso asked if the problems were the judge or environmental interests. Gary stated that Montana attempted to readjust priorities through the '97 legislative actions. Perhaps these changes were not clear in the lawsuit background.

What happen next on a federal level is also up in the air. Gary noted that EPA is looking at their process. They have 25 lawsuits on process. A federal advisory committee has also just finished a 1.5 year study and in Aug '99 proposed new rules to regulate TMDL development. However, Congress in providing current funding dictated that the new budget could not be spent on implementing those new rules. It will be after July 2001 when the congress looks at this issue again. (The new federal rules differentiated between pollutants and pollution, created separate lists for these issues and changed those streams in need of TMDL development. This would make a significant change on the number of Montana stream in need of TMDL planning.) Generally Montana is better off. Much of our '97 legislation matches EPA's new rules and we are in a better positions to adopt those changes. However, it is not clear who these rules affect the court order.

DEQ is asking the upcoming legislature to provide 8-9 new staff to work on water quality issues related to TMDL from the upcoming legislature. DEQ is hoping to find support for these proposals in the legislative process.

Next Meeting:

Agenda:

Some suggested items for the next meeting were:

1. Report on Dennis Workman's contract work with water users in the Upper Clark Fork River.
2. Report on Legislative actions.

Next meeting was set for Thursday, February 1, 2001, 9:00 AM - 3:00 PM in Helena, MT.